

Alabama Sentencing Commission

Minutes of Commission Meeting

May 21, 2010

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, May 21, 2010. Present at the meeting were:

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law, Tuscaloosa

Vernon Barnett, Deputy Commissioner, Alabama Department of Corrections

Ellen Brooks, District Attorney, 15th Judicial Circuit, Montgomery

Rosa Davis, Chief Assistant Attorney General, Montgomery

Cynthia Dillard, Acting Executive Director, Board of Pardons and Paroles, Montgomery

Ben McLaughlin, Presiding Circuit Judge, 33rd Judicial Circuit, Ozark

Joe Faulk, Elmore County Commission

Advisory Council:

Denis Devane, Birmingham

Chaplin Adolph South, Tuscaloosa

Jeff Williams, Director, Community Corrections Director, Alabama Department of Corrections

Miriam Shehane, VOCAL

Kent Hunt, Department of Mental Health

Judge Bill Cole, Circuit Judge, 10th Circuit

Staff:

Lynda Flynt, Executive Director

Melisa Morrison, Analyst

Bennet Wright, Statistician

Marcus Moore

Leslie Palmer

Leigh Ann Jackson

Others Attending:

Dr. John Speir, Applied Research Services

Dr. Tammy Meredith, Applied Research Services

Steve LeVeque, Administrative Office of Courts

Annette Brown, Birmingham

Sharon Denham

Michael Robinson

Robert Oakes, Assistant Executive Director, Board of Pardons and Paroles

Jon Harris

Becki Goggins

Welcome and Introductory Remarks

Chairman Colquitt called the meeting to order at 10:00 am and made introductory remarks, thanking everyone for attending and introducing ASC law student interns, Marcus Moore, Leslie Palmer and Leigh Ann Jackson. Chairman Colquitt also welcomed back, Drs. Tammy Meredith and John Speir of Applied Research Services, Inc., noting that they have been working with the Sentencing Commission as consultant from the beginning and have truly been an asset to the Commission. He noted that they will be talking to the Commission today about considering truth-in-sentencing, which is one of the legislative charges to the Commission. Judge Colquitt mentioned a law review article that he had published in which he pointed out the challenges of adopting truth-in-sentencing and the fact that we are a little late in the game in adopting truth in sentencing. Some states adopted truth in sentencing in the 1980s and Alabama is just now talking about it and postponing until adequate alternative sentencing options are available for nonviolent offenders.

Truth in Sentencing – Dr. Tammy Meredith and Dr. John Speir

Dr. Tammy Meredith addressed the Commission and noted that their discussion this morning was going to revolve around 4 main topics: 1) Truth in Sentencing in General; Discussion of what is truth in sentencing, how is it defined in different places, what is the history, how states are incorporating concepts of truth in sentencing into their structured sentencing systems; 2) What different states are doing in regard to truth-in-sentencing. Some have been very innovative, incorporating different components of truth in sentencing in a wide variety of sentencing systems; some of them determinate systems and some indeterminate; 3) Alabama's data; specifically time-served data. The proportion of sentence served to sentence imposed 4) Recent sentencing legislation, i.e. what is going on around the country today in regard to sentencing. Dr. Meredith noted that truth in sentencing was the hot topic two decades ago and there are new movements on the horizon today, some of it to deal with the backlash of the truth in sentencing movement and the overcrowding of prisons and jails. Dr. Meredith then distributed copies of the presentation.

Truth in Sentencing Generally

What do we mean by “truth in sentencing”? It has different meanings in different context. The idea is less of a specific concept and more of a movement or idea our country over the past twenty years to bring to light what a judge imposes in the courtroom and how long that defendant actually serves in prison. The idea of truth in sentencing is really any practice to reduce the uncertainty between the sentence imposed and sentence served. This was the topic of reform back in 1990. What were the goals? The number one goal of truth in sentencing in this country was to restore truth, credibility to the sentencing process, so that the public would now know if a defendant is sentenced to prison how much time he or she will actually serve. The truth in sentencing movement was a backlash against indeterminate sentencing.

Second, and most important in terms of how people describe truth in sentencing is increasing the portion of your sentence that you actually serve in prison. Therefore, truth

in sentencing is often equated with the 85%, which is the federal standard. When the truth in sentencing movement got its start, it was suppose to be set up and implemented with structured sentencing systems so that through structured sentences, sentencing commissions could control prison beds. The truth in sentencing movement is how to bring credibility to the system and make sure that violent offenders serve a long time in prison and controlling how to best using prison bed space, i.e. prioritizing.

History of Truth in Sentencing

The truth in sentencing movement began with the federal Violent Crime Control and Law Enforcement Act back in 1994 which created the VOITIS program, the Violent Offender Incarceration and Truth in Sentencing program, which was a federal grant program to give money to states to encourage them incorporate truth in sentencing into their state systems, through legislation and sentencing practices. States could apply for these grants, giving assurances that they would implement a policy where violent offenders would serve a substantial portion of the time imposed. The original VOITIS program required offenders to serve 85% of their time.

Two years later there were amendments to the Crime Act that expanded eligibility and changed some of the rules –making it easier for states to get money. This was really in acknowledgment that the 85% rule did not fit all states. Eighty-five percent of a long sentence in North Carolina was actually a shorter sentence than 50% of a sentence in Georgia. In order to accommodate all the different sentencing systems, the federal government changed the Crime Act and the new amendments to the Act allowed states to have a range of policies and the earlier requirements that you had to focus on, repeat violent offenders, was dropped from the Crime Act. You were no longer required as a state to have 85% time served in order to get VOITIS money. The federal government moved toward a looser definition of what truth in sentencing was. The states were still getting money at the time. By 1999, 41 states and D.C. had some form of truth in sentencing laws. In a six year period there was \$2.7 billion that was awarded to states to increase the capacity of states to incarcerate violent offenders; it was a prison capacity building movement. During that time, Alabama received \$22 million of VOITIS money.

There have been many reports produced on what happened with all that VOITIS money. Ten states had actually made substantial truth in sentencing reforms before VOITIS ever came along. The structured sentencing movement was happening before the VOITIS program with federal grants awarded. Many states had their own Sentencing Commissions and were making changes to their sentencing practices before and during the VOITIS grants.

Virginia, which is an important state to us, because in standards development, ARS has modeled a lot of what they have done here in Alabama with the Virginia system. Virginia was the first state to develop what they called truth in sentencing guidelines. In 1995 they developed TIS guidelines, although they had sentencing guidelines in place previously for ten years, since 1985. After ten years of experience with sentencing guidelines, they developed TIS guidelines and their new guidelines had some rules: felons had to serve 85% of their time, they abolished discretionary parole release, they

limited earned time credits in prison and they specifically focused on violent offenders and increasing their prison time – 2 to 4 times the amount of time of sentence with the new guidelines.

What were some of the practices? Truth in sentencing practices varied widely around the country. Here were some of the components of truth in sentencing: some states required a certain percentage of the sentence to be served; some states were focusing on changing release practices, limiting, eliminating or restricting parole, or changing good time and earned time that prisoners could receive; other states were focusing on changing the length of sentences imposed so that they were shortening sentences in the courtroom so that there would be creditability so that the defendant would serve what sentence was imposed. Many states put truth in sentencing requirement just on certain offenders, violent or repeat offenders.

The big question is: What is the Impact on Prison Populations. Between 1995 and the next ten years, there were many agencies studying truth in sentencing - the Department of Justice, the Urban Institute, Rand Corporation, the National Institute of Justice, etc., and they funded a lot of studies to determine the impact of all this federal VOITIS money to the truth in sentencing movement. Most of these organizations noted that while these reforms were being implemented, violent crime was dropping any way, so is difficult to say which caused an impact on the prison population. Crime rates were dropping and prison populations were evening out at the time truth in sentencing policies were coming into play.

Secondly, prison population changes had more to do with sentencing reform rather than truth in sentencing rules and as a response to VOITIS. In other words, sentencing guidelines and sentencing commissions were taking responsibility for controlling their prison populations more than the truth in sentencing movement ever did. The Bureau of Justice Statistics, the statistical arm of the Justice Department, put out a report that the violent offenders in most states were serving about the same amount of time any way. So what did VOITIS really do? The Rand Study concluded that VOITIS had a very minimal impact on managing state prison populations. The bottom line is that the Crime Act had very little influence on state sentencing policies. One report stated that the \$2.7 billion was actually pumped into states during the VOITIS years was actually a very small amount of dollars when you consider all state budgets to incarcerate. So it did not have such a big influence, since it was only a small piece of the pie of all the money that is spent to incarcerate offenders.

An NIJ funded study says that changes in crime rates and arrest rates had more to do with prison admissions and were more influential in affecting prison populations than truth in sentencing policies.

Two studies, which are state specific, pertain to Illinois and Virginia. Both states adopted TIS guidelines and each developed did an evaluation 15 years later. In Illinois, which required 85% of the sentence for murders and sex offenders, it was found that judges were not giving shorter sentences after implementation of TIS. They had previously

assumed that if judges knew how long a defendant was to serve, they would adjust their sentencing practices. This did not happen. There was a huge surge in prison population as a result; people were serving more time in prison because there was no adjustment. After 15 years, Virginia reported (probably the state with the most report regarding TIS) that time served is now longer in Virginia; violent offenders serve longer sentence, lower risk offenders are redirected to alternatives, and the inmate population growth has been 31% over the last 10 years. This population growth is lower than what they had before they had truth in sentencing guidelines - but previously the growth between 1985-1995 their population growth increased 150% and it was also a time during which prison populations were growing nationally. This 31% is high considering that it occurred during a time when considered with what is going on nationally – crime rate is decreasing and the prison population is not growing at the high rate.

At the time Virginia came into Truth in Sentencing they were at capacity and they built prisons. They set out to increase prison capacity. They actually overbuilt and later had to rent out space to other states.

Dr. Speir noted that this 31% growth could have been what Virginia expected and planned and that they consciously made a budgetary decision to invest more to keep these violent offenders in prison. Therefore, do not always interpret an increase in prison population as negative consequence.

In response to questions from Mrs. Shehane Dr. Meredith advised that not all states that adopted TIS had abolished parole. She asked how many states had abolished parole. Dr. Speir and Meredith stated that they did not know, but would find out.

Judge Colquitt stated that when looking at TIS, we see what we want to see. Although some have said that if you have truth in sentencing the prison population will go up. The procedure should be that you adopt a policy, when you set out to implement that policy you must be truly educated on what you are doing. For example, you say that we are interested in protecting the public against violent crime. We want to keep violent offenders longer and we want to prioritize our resources toward addressing violent crimes. What we can do, if you are willing to do it, and it is a trade off – is to divert non-violent criminals out of the prison system and put them into community alternative programs at a lower cost and at no additional risk to the public. We could actually reduce prison crowding depending on the amount diverted out of prison to have beds for the violent offenders. The problem is that many think that TIS addresses all problems. Judge Colquitt stated that truth in sentencing does not address disparity in sentencing. It does not necessarily deal with bed space because we can adapt our truth in sentencing to deal with bed space or not. If we do like some states and just pass a truth in sentencing law, like Mississippi did, and we see our prison population jump 125% in 18 months, we should have realistically been able to predict that outcome. Truth in sentencing means a lot of different things to a lot of different people and if we are going to implement truth in sentencing then we need to know why we are implementing it. What are we trying to accomplish and what will happen if we move in a certain direction. If our TIS is going to

be a tough sentencing scheme, we automatically must adopt and fund community alternatives. It has to come, and that is one of the things that Virginia did.

Mrs. Davis stated that if we are looking at truth in sentencing in Alabama the one thing we have said over the last six years, is that this has to be done carefully – it has to be well planned, well thought out, with impact, so that we know exactly what we are doing and the Legislature is told exactly what we are doing. If we are going to provide for longer time served on a system that is now experiencing 190% capacity that has to be in conjunction with something happening to increase capacity. In order to keep the violent prisoners in prison, we have to have the bed space.

Dr. Meredith continued her presentation, stating that in the decade after the truth in sentencing movement took hold, since 2000, most states have been having to deal with expanding prison populations and expanding costs, even if their populations have not gone up. State correction expenditures are growing nationally an average of 7.5% per year, therefore it is getting to be very expensive.

Dr. Speir noted that one of the questions that is important is “what is a violent offender in Alabama?” He indicated that they often look at the current offense which may not be violent, but when they look at their criminal history they are really a violent offender. That is a question we have to think about. That will play into the truth in sentencing system. Statutorily it should clearly indicate which offenders are violent offenders, such as in South Carolina. It was noted that Alabama had defined a “violent offender” in the Sentencing Reform Act but it was very broad and was applicable to that Act only. Dr. Meredith stated that this was an issue that the Commission would be grappling with this year as we produce a report on truth in sentencing and how we want truth in sentencing to look in Alabama. States have answered that question differently – how to define what is a violent offender and do we want to focus on violent offenders, and what that means.

Dr. Meredith advised that she brought a broad overview of a variety of states to give the Commission members a sense of what states are doing and how did they develop and incorporate notions of truth in sentencing into their structured sentencing systems. This is not comprehensive review of what every state is doing, but it may spur questions.

Starting with **Virginia**, she explained that that state has voluntary sentencing guidelines based on 17 worksheets that are offense based – robbery, homicide, etc. Completion of the worksheet is legislatively mandated. They abolished parole when they went to truth in sentencing in 1995 and their guidelines today are based on time served, so the guideline recommendations in their system is time to serve, not time imposed. An offender has to serve 85% of the imposed sentence but they can get 15% off for credit time in prison. One thing interesting about Virginia, it had a 10 year history of very high compliance with their sentencing guidelines before they instituted truth in sentencing guidelines. They went very slow and methodically into this business and made decisions about how to implement their notion of truth in sentencing in Virginia. In their legislation developing truth in sentencing guidelines also included a mandate for a network of community corrections alternatives to incarceration and it was funded by the Legislature

at the same time the truth in sentencing guidelines went into effect. They spent money on developing detention, probation and diversion centers. They came up with goals and said that if violent offenders are going to take up more of our prison resources then we are going to actually build more prisons to house violent offenders and we are taking some prisoners out of prison and put them into the community. It was a large package, where all their goals were set forth in the beginning. The Legislature mandated and funded the entire package, which is probably why it worked. It has been a huge success to them because they have violent offenders serving longer time in prison. Their prison population is more violent, a lot of property and drug offenders were moved out to probation centers. They had three goals when they set up their system: 1) longer prison terms for violent offenders; 2) incarcerating for longer time prisoners who had violent criminal records; and 3) develop a mechanism to redirect 25% of our lowest risk prison bound property and drug offenders to alternatives to incarceration. Seven years later, they developed a risk assessment instrument to determine who were low risk property and drug offenders, which they use now for three of their worksheet – fraud, larceny, and drug worksheets. It is applied to defendants who are scored by the worksheets to prison time (IN decision); if the offender scores low risk they get diverted from prison to community corrections. They aim to divert 25% by this method. It is a good system because it is well thought out and planned, with set goals, legislative mandates, and funding.

Mrs. Davis noted that it was her understanding that the offenders that Virginia started with, prison-bound offenders, that these were not your traditional lowest risk offenders. They were the lowest risk of the prison-bound offenders, which may have been moderate to moderately high offenders, the bottom 25% of the prison-bound offenders rather than all offenders including those that otherwise would have been sentenced to probation. Dr. Meredith agreed, emphasizing that the risk assessments in Virginia only applies to the bad guys, where the determination has already been made that they should serve time in prison.

Dr. Meredith continued, reviewing **Minnesota**, the state with the first sentencing guidelines system in the nation and were well established, had their guidelines up and running when Virginia started their research. It is a mandatory grid with 11 offenses, 7 prior records, and judges are required to sentence within a range. They can depart if there are, what they call, substantial compelling circumstances, defined in their legislation. They have very narrow sentencing ranges. That is the way that Minnesota decided to manage their prison population. Under this system a defendant has to serve 2/3rds of his or her sentence. In 2009 they passed new legislation so that mandatory minimums for certain drug offenders can be disregarded, so they are changing some of their rules. Departures from the guidelines do require some documentation and there is an appeal process.

Mrs. Davis noted that, in considering adoption of a truth in sentencing system in Alabama, we recognized that the ranges would need to be shorter. Not shorter sentences but more narrow ranges. Dr. Meredith noted that using these narrower ranges we can estimate how many prison beds we are going to need in the future.

Dr. Meredith then discussed **North Carolina**, another state with a mandatory sentencing guideline grid. She noted that the National Center of State Courts put out a report some years ago comparing all sentencing guidelines systems, ranking all states according to whether they were voluntary or mandatory. North Carolina was ranked as the most mandatory sentencing guideline system in the country. Judges are required to sentence within a range. There is no parole. You can impose sentences based on aggravating and mitigating circumstances, but you have to have written justification for either. Offenders must serve 100% of their minimum and they can serve up to a maximum. The ranges are pretty tight. They focus utilizing prison beds for violent and repeat offenders. Defendants can appeal their sentence. Mrs. Davis noted that North Carolina is rethinking their system now. They have outgrown their prison bed space and have put together a group to review their system. Dr. Speir noted that they never got around to establishing all the alternatives to prison they had planned. Judge Ross, President of Furman University mentioned that they also suffering because of that with mandatory guidelines.

Ohio, according to the National Center of State Courts' report is at the other end of the spectrum. It is the most voluntary system. This is a grid, with 5 offense levels. Judges are not required to complete a worksheet and they can depart without justification. There is no discretionary parole release, but they do have post incarceration supervision. In 1997, they went to a truth in sentencing system. In one report, it was stated to be the "most honest" because their time served is up to about 97% of time imposed. Ohio has reformed their Criminal Code, trying to simplify it. They have increased severity and the sentence recommendation for specific violent offense, which are defined. Since their prison population is now increasing, they are looking at developing an "earned credit" system and they have a Task Force that is considering changes in the law that would treat drug offenders more harshly than non-drug offenders.

Dr. Meredith then reviewed **Pennsylvania**, noting that Dr. Speir had done a lot of work in this state. Pennsylvania has a voluntary sentencing grid. The District Attorney completes a prior history form and the judge is tasked to complete a sentencing form. They have aggravating and mitigating circumstances and the defendant can appeal. The guidelines in Pennsylvania set a minimum range and the statute sets the maximum so you have to serve 100% of your minimum before you can be parole eligible. Some of the reforms are – in 1994 they increased punishment for violent offenders and they also chose to divert nonviolent offenders to alternatives to incarceration. Their guidelines are now premised on what is called capacity constraints. Sentencing guidelines have to be in line with correctional resources. This is one state that looks at correctional resources when they sentence. Dr. Speir noted that their sentencing system is complicated. He said that Pennsylvania has just gone to a new system which allows a prisoner to be released prior to serving 100% of the minimum and also, between your minimum sentence and maximum sentence parole has the authority to grant release. Now they are putting in parole guidelines. Dr. Meredith stated that they have a very sophisticated correctional simulation computer model that is used to forecast the impact of changes.

Another state with a voluntary sentencing grid is **Arkansas**. A judge can depart from the sentence recommendation but they have to give a written reason. Defendants cannot appeal.

Data

Dr. Speir began his presentation on Alabama data on time served, referring to a powerpoint showing average percentages of time served. He noted that this was just a sample of information that is helping them to come up with solutions in your time served. He emphasized that it was aggregate data, i.e., it rolls up a lot of diverse offenders. He cautioned the Commission members to not think that this data applies to a lot of violent offenders.

They first looked at months served in prison for all releases. They are now going to start drilling down further into the prison population. Dr. Speir noted that when you are talking 10,000 prisoners admitted to prison each year, two and three months can make a huge difference and they will demonstrate this to the Commission as they go into their work over the next few months. He then reviewed the PowerPoint slides, indicating that the Commission members should not pass judgment on the system that the Commission has worked on. The data represents people who have gotten out of prison, so they may not have been on release even part of an evaluation under the standards. In other words, those sentenced under the standards may still be in prison now and you can only look at time served on people who have gotten released. Don't use this data as a measure to determine whether the standards are effective or not.

The percentage of time served has been fairly stable – 50%, which is really fairly high where there is an n indeterminate system.

Examining release date he reported the following on how inmates were getting out:

	2005	2009
Splits	45%	40%
EOS	32%	35%
Parole	23%	24%

Parole releases have remained steady. Max outs (non splits) have been stable. Split releases are down some. Dr. Speir again emphasized that months served shown are in the aggregate. Percent of time served is dramatically different. He noted that Bennet Wright (ASC statistician) has shown that actually time served on a split is not as much as one would think.

He noted that we have had prolonged overcrowding for years. Dr. Speir indicated that he wants to look into good time credits and disciplinaries and whether that much prison

overcrowding has led toward more infractions and potentially holding people longer. It was noted that to hold the number of months the same, you would have to have more consistent judge sentencing, because if judges are getting more severe in sentencing it would change the data. Bennet Wright indicated that from his study of sentencing trends, they have been consistent over the years. Dr. Speir reiterated that in some states that went to truth in sentencing, where they thought the judges would reduce sentenced they did not. That was seen in Georgia as well.

Reviewing months served in prison for split sentences, Dr. Speir noted that this was highly consistent with Bennet's work that he presented to the Sentencing Coalition a few weeks ago. Even though you may get a 12 year sentence on a split, to serve is pretty much on the low end. Although splits may be up, the jury is still out what role split sentences are playing in the population. Just because splits are up does not mean anything in our population analysis. It appears that the judges like the split, they like that certainty, but whatever, most of the time served was on the low end. It is also one way to avoid high sentences. He said he would be looking at that in the simulation model.

Dr. Speir cautioned about reading too much into the percentage figures. Noting the 10% increase in prisoners being released on splits, he advised that it could have an impact on the prison population if splits are up and they are serving longer as a percentage; however, if the sentences are not as high as they were five years ago, it may just cancel out and not mean anything. What really matters is how long you are really in a bed, not a percentage of anything. Its days in the bed that really matter. You have to be careful with percentages and your interpretation of what they may mean.

Judge Colquitt mentioned a movement under way around the state at one time in Alabama in which judges were encouraged to use the split sentence and reduce the sentence imposed which would get them out earlier. Judge Ben McLaughlin stated that it might be a good time to revisit that. Discussion began about the practice ADOC now has of releasing prisoners serving split sentences to the SRP program. These inmates, while not occupying a prison bed, are still counted by ADOC as inmates.

Criminal Justice Reforms in 2010

Dr. Speir mentioned the Sentencing Project and said that it back up what was said on TV - states have three things they spend their money on - medicating, educating and incarcerating. You are beginning to see some changes such as repeal of mandatory minimums. Louisiana is beginning to look at repealing some mandatory minimums. Mrs. Davis said she thought that Ohio, Wisconsin and that area have cut back on mandatory minimums. Dr. Speir noted that Tammy made a good point earlier, that a lot of this went into effect about the same time crime rates started declining and while there is no doubt that incarcerating habitual, chronic offenders for longer has an effect on recidivism and repeat crime, but there were a lot of other things going on that could have contributed to the decline. If you looked at states that did not engage in these truths in

sentencing policies, you see that their crime rates were declining just like everyone else. It is very tough to disentangle that issue.

Reducing the Exposure to Revocation. This has been discussed for years to reduce probation and parole revocations by different methods they could use to hold them back from returning to prison. He mentioned Alabama's recent bill limiting the amount of incarceration that can be imposed on revocation of probation for technical violators. The way it is worded, we are really not sure how many people will qualify. However, Alabama did get their foot in the door in trying to deal with technical violators. Dr. Meredith mentioned that California is one place in the country that is having a huge problem with the inflow of probation or community supervision failures entering their prison system. They have had the largest growth of any state and now almost half of the people that are coming into their prisons are people failing in the community. California had created some program to actually offer money to counties if they could keep probationers and parolees from being revoked to prison. Mrs. Davis noted that this was happening in Louisiana – the state pays the counties to house the inmates.

Dr. Speirs stated that there was continued momentum to reduce time served in prison. They are either manipulating credits or finding other ways to ease overcrowding. It is statutory tinkering but they are trying to find ways to reduce time served in some fashion, particularly for the high impact population. Noone wants to reduce time served for the high-end violent offenders that we are all afraid of. It is the low-end prisoners. He mentioned that recently the United States Supreme Court ruled that it was unconstitutional to sentence a juvenile to life without parole for a non-homicide offense. He said that he is not saying that this is driving our prison population. In Georgia 17 year olds are considered adults. At one time there were discussions about increasing it to 18 and making 17 year olds juvenile. While there may have been empirical evidence that it would have been a good thing to do in terms of services they would get - treated at the high end in the juvenile system, receiving more services, unfortunately the juvenile system is 15 times more expensive the adult system.

Increase the Monetary Amounts for Theft Crimes.

Dr. Speir noted that Alabama had passed a bill earlier that increased the monetary amounts for theft crimes. He said that this is actually a little controversial. Sometimes they end up in a different court with shorter sentences. By having a longer sentence there would be more time to recover fines and restitution. This was one of the issues in South Carolina.

Requiring Pre-Sentence Risk Assessments to Identify Candidates for Prison Alternatives

Dr. Speir noted that Alabama does these already; however, risk assessments are different. While at one time they were these lengthy report about the person's life history, but these have been automated by some states, like Virginia. One issue of great concern, and which has already been recognized in Alabama and many are not be aware of it, is that you must ensure that these are used on prison-bound people. Dr. Speir cautioned that if you do a presentence on everyone, everyone could be high risk and you would expand the prison population. You must be absolutely sure that these are people that would be going

to prison. Virginia recognized this. To throw risk assessment out there to everyone is just trouble in the making.

Judge Colquitt advised that this was very important for us to remember as we deal with risk assessments and In/Out Decisions. He stated that a few years ago a few people went to New York for a seminar on alternative sentencing for prison-bound offenders. One of the program directors said that her number one job was to keep judges from sending people that they would have put on probation to her program because it was safer than just putting them on probation, when really her program was designed to take people who were going to prison that could now be treated at a cheaper and in a more effective manner by sending them to an alternative programs. If you create risk assessments that apply to people that are prison-bound to determine if you can take them out of prison and put them in some drug treatment or educational program or counseling and you start giving that same risk assessment to people that you were going to put on probation, what happens is that you are pushing out the prison-bound people that need these programs more. You elevate up instead of reduce.

Dr. Speir said that Pennsylvania has a program called state intermediate punishment (SIP) that the judge can't impose unless they meet a long list of criteria. Usually it only applies to those with at least a two year sentence. You have to serve incarceration time but you only serve a certain amount (seven months) and then upon exit the offender goes into SIP – a series of halfway houses and transition centers in the community. Judges have not really embraced SIP despite a big campaign. Along that line, they have a program of true diversion. The inmates come through the gate; assigned a number, once DOC notifies the judge that he is a candidate of SIP the judge can reconsider them. They are not diverting a lot people that way.

Some states are also extending or expanding good time.

Early Termination of Community Supervision

South Carolina jumped on the North Carolina bandwagon in the late 1990s like a lot of states did and actually created a Sentencing Commission and built guidelines like North Carolina and once they were through the Legislature (which is very powerful in South Carolina – it appoints judges), passed a sort of good time for probationers. In South Carolina there is a five year limit for probation. For every day you are doing well on probation you are earning days off your probation sentence. This helps with community supervision and limits exposure to revocation.

Dr. Speir said that in Georgia they have what they call “probation options management.” At sentencing the judge can sentence a defendant to a non prison sentence saying that he is going to put him on a probation options management. What happened in Georgia was that defendants were spending 5 weeks or more in jail waiting for a revocation hearing. What Georgia did was create a law delegating authority to a special select group of hearing officers who traveled the state like old circuit riders. They had administrative

hearing training and would review the violation. Georgia has probation detention centers. These hearing officers could do anything they want to the probationer, in terms of adjusting the terms of probation or imposing sanctions, except sending you to prison. The law states that a probationer cannot sit in jail more than 7 days before having a hearing. Georgia's probation detention centers are secure facilities but they are very minimum and are dormitory style. Historically judges would send probation violators there for two years or so. Now administrative hearing officers will send them in for 60 days and move them around to other programs (IPS, day reporting centers), without having to go back before the judge. This has really freed up the judge. There is a competing program out of Hawaii called HOPE that is like probation violations for drug courts but is before a judge. It is noted for its success because it provides swift and sure punishment, but is pretty resource intensive.

In closing, Dr. Speir announced that Pew Charitable Trust has funding Applied Research Services, Inc. to be involved in the Chief's Sentencing Coalition project with Vera Institute of Justice. He also advised that he has been working on repopulating the Alabama simulation model (built in 2005). The simulation model has projected with less than ½ % error. It did jump to 2% one summer when commitments to prison increased. Based on this, we should have a really great model to use in developing truth in sentencing proposals. What we don't know yet is the exact degree the standards have engaged in the state. Even if you have a high compliance, you don't know whether the judges are aggravating above what they normally would do. There are a lot of factors in place to see the impact standards are having statewide.

Dr. Speir noted that he and Dr. Meredith have never seen two staff people like Melisa Morrison and Bennet Wright who have matured analytically – have grown analytically. He especially noted the work of Melisa, stating that he was “blown away by what she has done with the programming and manipulation – it is just absolutely impressive.” He noted that Bennet came in with a lot of these skill sets, Melisa didn't, but has them now.

Questions and Answers

Q. Addressing Dr. Meredith, Lynda Flynt asked whether, in her state study, she found that after states adopted truth in sentencing, there was a rush of legislation imposing mandatory minimums. Ms. Flynt noted that this was something that we cannot predict but has always loomed as a possible problem.

A. Dr. Meredith stated that she did not think that she saw a consistent pattern. She noted that it was very difficult to determine what states are doing. Referring to a report by the National Center of State Courts that was trying to describe what was happening with states she reiterated that “It is almost impossible to measure, because what you have to rely on is fugitive literature.” Meaning a lot of what goes in states, the development of policies, isn't written up and published in documents and books and periodicals that we can all read and understand how the procedure developed in another state. It is difficult to answer how often mandatory minimums were enacted against all states. We do not know. We saw trends and can talk about how truth and sentencing policies went into

effect in many states years and years ago. Years go by and prison populations and expenditures increase, but that has nothing to do with the fact that we have more prisoners. There is now a response among states to get creative in how to deal with these sky rocketing costs. States are now looking back at all these mandatory minimum requirements that were instituted 20 years ago, because we were caught up in some of the “get tough on crime” rhetoric, which was at that time sort of a national movement to move away from indeterminate sentencing practices nationwide and get a handle on what we do in the courtroom. Now we are seeing some of the impact of that: it is handcuffing judges and correctional professionals in how to really manage a prison population. Now, states are forced, because of the fiscal crisis, to think more creatively. Dr. Meredith said that she thinks that the repeal of mandatory minimums is now being forced upon people. While it may not be politically popular, our hands are tied as to what to do.

Ms. Flynt indicated that she was afraid that Alabama was going the other way with the recent mandatory minimums for sex offenders and other crimes. She fears that with the proposed truth in sentencing standards the Legislature will look at the recommended sentencing amount based on time served and then impose minimum mandatorys.

Dr. Meredith stated that states that have done a very good job of developing sound policies that allow them to manage their prison resources have been those very states with very very strong leadership in their Sentencing Commissions that have educated and educated the legislators about why this is important. Where this has really been successful is Virginia and Rick Kern. It is all about messaging and this is something that this Commission needs to talk about. Are you messaging? Are you talking data in front of every audience you can get in front of? Are you getting the message out about why mandatory minimums are a repeat thinking of the old way, and why that is dangerous. Of course politics is a part of it, but education, messaging, producing good solid reports and making sure you are talking to the right audiences – that is an important part of the function of developing structured sentencing systems that meet the goals for that state – clearly defined goals and a clear vision of how to get there.

Ms. Flynt noted that she wanted to let the Commission members know what a good job Bennet Wright has done with the Legislature. Dr. Meredith agreed and said that she thinks that is a tool that we need to learn to use effectively and improve. States that have succeeded, that is one thing you see consistently.

Dr. Speir noted that another thing about truth in sentencing as you move toward some certainty – 85% or whatever, particularly in a voluntary system where the judge has total discretion, you have to make a call whether that is the path you want to take. He reminded the Commission members that Virginia used their guidelines 10 years before they moved to truth in sentencing. Alabama’s problem is “You’d like to invest in the stock market, but you have no money.” That is the issue with community alternatives and other programming. You are caught in a dilemma.

Judge Ben McLaughlin commented that he wanted to state for the record, that while one of the most important considerations we have is to control our prison space and the best

way to use our correctional resources, but it is important for the Commission members to know what happened when he was Chairman of the Truth in Sentencing Committee of the Sentencing Commission. He explained that the concept for truth in sentencing at that time was to come up with the sentencing standards and kept judges' judicial discretion because they were not mandatory. Judges were to determine from those standards the length of the sentence and the recommendation for the IN and OUT. Once the judges used those standards that a person would serve a prison sentence, then our idea would be that before he left the courtroom, that the victim would know day for day how much time he was going to serve, and the defendant, judge and public knew what he was going to serve on the sentence. Judge McLauchlin stated that the concept followed the Minnesota truth in sentencing – not the mandatory sentencing structure – the truth in sentencing provisions which required that a defendant serve basically 65% of the sentence. We were going to break it down where a Class A, which is normally your violent, bad, 10 to life type sentences, those sentences would be 85%. He noted that the committee didn't come up with exact figures but he said that for a Class B felony, it may be to serve 50%, for a Class C felony, 65%. So you have a ten year sentence and it's a Class B felony, you knew you were going to serve 5 years.

Under this scheme, Judge McLauchlin explained, you would not have good time but the difference between the five year sentence and the ten year sentence he could get bad time up to the 10 years total. There would not longer be inmates ending their sentence without supervision. If, in the example, the inmate finished his five year sentence, and would get up to a year supervised release, no matter what. Because at that time a good guy in prison would get good time and would be out on parole and would be supervised. The bad guy would EOS with no supervision whatsoever. That makes no sense, so we would always have supervised release for state inmates. This was the general concept the committee came up with, but we realized that we would need to give enough time for the original standards to work before we developed the truth in sentencing standards. Judge McLauchlin stated that the point he was trying to make is that the whole idea is that when the defendant was remanded to the custody of the sheriff to serve a prison sentence, everybody knew how much time he was going to serve in prison.

Dr. Speir noted that Missouri actually came about to it differently. They actually advanced the parole decision, they moved it back to sentencing and the judge. They would know at sentencing what the likely parole release date would be, knowing that it could go up but not down.

Ms. Flynt stated that was how the statutes providing a “blueprint” for later truth in sentencing standards, actually provided that the post incarceration supervision period would actually be a part of the sentence.

Dr. Speir said that one thing they were going to look at when they do their work on compliance was analyzing DA tenure and judge tenure on the bench. This is in recognition that older judges are less likely to change their sentencing practices, where new judges and DAs might very well see the standards as a helpful tool. He said that

they saw this when he was working in Georgia – the new judges really appreciated the guidance.

Q. Mrs. Miriam Shehane asked whether anyone had ever done a study on what the cost of medical care would be for inmates released and receiving Medicaid compared to what the Department of Corrections would have to spend for their medical care.

A. Dr. Meredith said that there have been some examinations of this because it is such a hot topic right now. This could be a topic worth pursuing. The care is provided by the taxpayers for an inmate, regardless if in or out of the institution, but it is always more expensive in the prison system because when you are in the community you do not have two armed guards transporting, holding and waiting for you to come out from the doctor's office. When you are an inmate and have to obtain medical care outside the prison the costs become astronomical for taxpayers because you have to transport them and you have to transport them with armed guards.

She emphasized that, in America, the #1 provider of mental health services is the prison system. There is no more expensive way to provide mental health care services than in a lock down facility, because of all the added costs of how we do it. We are doing it in the most expensive way. Dr. Speir noted that Georgia has a large medical truck with a mobile operating room in it and they take it from facility to facility to have a local operating room.

Judge Colquitt stated that you have to fold in cost shifting into all of this – it is not just an issue of how much, it is an issue of who pays. As the chairman of a 5 hospital system, Judge Colquitt noted that these inmates are probably not going to get Medicaid or Medicare, but rather they will get free care in the emergency room at the local hospital and the people in that community will have to foot the bill and that is the most expensive type of medical care you can have. He said that he, therefore, does not buy into the idea that providing medical care in prisons is more expensive than providing medical care on the street. He does realize that either one ends up being publicly funded, but it may not come out of ADOC's budget or the local sheriff's budget, it comes out of the local hospital budget.

Report on the CCAS Project and Standards Committee

Mrs. Rosa Davis addressed the Commission members and updated them on the latest developments in the Cooperative Community Alternative Sentencing Project (CCASP). She explained that there are several aspects of it that are going on now. She advised that work has now started in Birmingham and Marshall County and we still have a lot to do in Montgomery County. At some point in the next month, we hope to get back with the folks in Montgomery and move forward a little more.

CCASP has had two meetings in Jefferson County. The first meeting was simply an explanation of the project and what we want to accomplish and bringing the community

agencies together to talk with each other and discuss how they could build a continuum of sanctions, as well as incentives, in the community for felony offenders. This is so we can get the biggest bang for our buck and direct resources where they need to go and actually effect public safety by decreasing victimization in the community by the people who are being served in the community.

In Jefferson County, for the second meeting, the different agencies that supervise people in the community reported to the group on what they did and how they did it. This included the jail officials, TASC community corrections, and probation. They explained who they supervised, how they went about supervising, how they choose who goes into which program, and what their various issues were. Mrs. Davis said that this was one of the best meetings she has attended. The entire group of local stakeholders was engaged in the conversation and the process. They identified at least 5 issues that were easily solved just by the fact that all of these people were in the same room on the same day and they agreed to continue with that. What may come out of Jefferson County is a revitalization of their Criminal Justice Committee that should be meeting monthly to make sure that the District Attorney knows how long people are staying in jail, if prisoners are ever making it to the penitentiary, who is going to community corrections, how long they are staying there, what kind of services are being provided, what do the risk/needs assessments show. She noted that Vera is now in the process of continuing putting together the report for Jefferson County and in the next two months there will be another meeting in Jefferson County.

Mrs. Davis announced that yesterday she and three interns drove to Guntersville and had the first meeting in Marshall County. This is an extremely interested group of stakeholders. All are very engaged. For the first time there was a legislator that came and stayed for almost the whole meeting. She said she really liked having the legislator there for the same reasons Dr. Meredith mentioned. One of the great things was having the legislator there to look at the value of evidence-based practices and looking at data to help drive public policy, and realize that a certain amount of data is available to inform the decision-making process.

As part of the CCAS project, Mrs. Davis advised that we have been working with a Risk/Needs assessment. Intern Marcus Moore has been entering data from the Risk Needs Assessment forms that have been completed and sent in to our office. Marcus stated that the one factor that he sees most often in offenders who reoffend was environment, i.e., criminal peers, those you associate with. While this is a gut reaction to the data that has been entered, it is interesting. Also, the Legislator at the meeting in Marshall County was impressed that the data that was being collected was local and not from a national sample or offenders from another state. It really hits home at what we need to change in Marshall County to change what is happening in community supervision in that county. This is exactly what we wanted to do.

CCASP is continuing to look at Risk/Needs Assessment and how to use it in Alabama.

Mrs. Davis said that the committee looking at issues feels fairly certain that Risk/Needs Assessment can be used similar to the way it is used in Virginia to direct otherwise prison bound offenders to community supervision and at the same time identify what services need to be provided for those offenders in order to decrease the risk of reoffending. CCASP is continuing to look in the pilot sites at what other uses should be made of the Risk/Needs Assessments: whether they should be given to judges before sentencing, i.e., before the IN/OUT decision, as part of the IN/OUT decision or is that too risky. She noted that a lot of people think that is too risky because if you have someone who scores as a moderate risk offender then the judge might send him to prison when he is really one that should be targeted for community supervision. The Committee is looking at those issues and recognizing the dangers involved in sometimes giving judges too much information. How should the information be used so it can be used correctly.

Mrs. Davis noted that the issues in every county that is involved in CCASP have been completely different. In Marshall County, they have so many counties around them with community corrections programs, they have a real issue with people who are serving community sentences in neighboring jurisdictions and how to coordinate community supervision between the jurisdictions. That is not so much an issue in the other CCASP sites, primarily because they are not surrounded by counties with strong community corrections programs.

Mrs. Davis stated that there is a lot of progress to be made and a willingness to make that progress, but it will probably be very slow. In response to a question from Ellen Brooks, Ms. Davis stated that she thought Jefferson County's data should be a lot more useful than Montgomery County's data. One reason for this is because Montgomery did not start using even the data end of MIDAS until recently, so we didn't have the automated data. The Probation and Parole data issues are the same in every county. Indicating that the Commission is looking forward to having ISIS (probation's new electronic automated data system) Robert Oakes, Assistant Director of Pardons and Paroles commented that it would be up and running July 19, 2010. Mrs. Davis explained that the problem in the past was that Pardon and Paroles system is dedicated to being a case management system than a data collections system and a case management system focuses on where you are now, not where you were three weeks ago and several fields are constantly overwritten. In data collection, you need that historical information.

Kent Hunt from the Department of Mental Health asked how much substance and mental health providers participated in the local CCASP meetings. Mrs. Davis advised that in Marshall County had someone there from Mental Health, and in Montgomery County there was someone in attendance at the first meeting – a provider was there, but we had a very poor response in Montgomery County to our survey for providers. We may have gotten one back. In Jefferson County and Lawrence County we have full participation by Mental Health. In Lawrence County we ran into difficulties because the Presiding Judge who was actively involved in CCASP retired.

Chief Justice's Sentencing Coalition

Mrs. Davis called on Dr. Speir to come up and help talk about the Coalition. She noted that she was not actually a member of the Coalition but has been attending the meetings as an observer, with Lynda Flynt. She explained that Dr. Speir is working with the Coalition on data issues. The Chief Justice is looking at a broad range of what can be done to address issues in our criminal justice system. What is going on around the country, what can Alabama look at that we haven't looked at before, what can they do to support the Sentencing Commission and its work. The Chief Justice felt like we needed a broader group, one that had a good bit of legislative representation on it, so that Legislators could learn what we know and have been learning for the last few years. The Chief Justice formed an interbranch Coalition, with representatives from every branch of government, to look at these issues. We have had one meeting. The group began to take a look at what they saw as problems in the criminal justice system that might be addressed. For the next meeting they will come up with a list of what is going on around the country, to take a look at those things in Alabama to see if there is something that can be recommended as part of an ambitious legislative proposal to affect the ineffectiveness of overcrowded prisons.

Dr. Speir stated that Vera, with Alison Shames who has done a great job, has been facilitating the Coalition. It is all being funded by Pew Charitable Trusts. Pew chose Applied Research Services in to do data analysis to provide support to Alison and Vera Institute and the Coalition members. One thing that they are doing is the Commission's simulation model, which is already developed, is being repopulated. That will help them identify (like ARS did with Pew in a project in South Carolina) the top priority drivers that were impacting their system. That will allow them to prioritize where to put the focus. They will then rank them. Otherwise you find yourself chasing issues that really will not have a significant impact long term. ARS is using data and projection models to find the issues and from there they will focus on a handful of major issues. What is different than the Sentencing Commission, is that while the Commission is institutionalizing the system as it is, this Coalition will make changes to current statutes, whether drug laws, the Habitual Offender statute, drug weights. Everything is on the table from sentencing to release. It will come down to what are the major drivers on the prison population. There is a lot of diversity of opinion on the Coalition. He noted that he learned a lot from the panels they had, listening to district attorneys and judges talk about it, specifically the split sentence and discussions about why they use it. Dr. Speir indicated that their work is on a fast track process, inasmuch as they want legislation drafted by late fall and introduced in next year's legislative session. He emphasized that sometimes the data does not fit with people's subjective view or interpretation.

Mrs. Davis commented that the Alabama Sentencing Commission is very grateful for the work of the Coalition, noting that the work that John and Tammy are doing for the Coalition will supplement what we are doing and give us a lot of information. Ms. Brooks questioned how these two groups would interact, i.e., would they refer some items to the Commission for consideration or are we doing our own thing. Ms. Davis stated that the Sentencing Commission is doing their own thing. If the Commission wants to review what the Coalition comes up with, or if they want to review what the Commission comes up with, and support each other. She stated that she thought this

would be very similar to the Governor's Task Force early in the Riley administration that made recommendations. A lot of the recommendations that they made were things that the Sentencing Commission had already recommended; but having that Task Force on board got a lot of those things done. It gave the Sentencing Commission additional backing. Ms. Flynt mentioned that where the Sentencing Commission has a lot of different goals, not just prison overcrowding, this Coalition is focused on prison overcrowding.

Ms. Brooks stated that her concern was that if the Coalition came up with a piece of legislation that affected sentencing how would the Commission react. She was trying to determine how the Commission and the Coalition would work together. She said that, from what she already heard, she suspects that they will be looking at some of the things that the Commission has already looked at and chose not to pursue. Ms. Davis said that it was possible that could happen.

Dr. Meredith suggested, that since this is the first time the Commission members had heard about and discuss the Coalition, that we think about what Ellen is talking about and that the Commission put together a list of topics to make a pitch to the Coalition for legislative support. The more proactive this Commission would be about ensuring that the goals here and issues affecting sentencing are in line with the Commission is to take the lead. She asked if there had been any discussion of making suggestions or presentation to that group? Dr. Speir stated that they will help carry the burden for ARS and the Commission. Ms. Brooks stated that she did not want the Sentencing Commission to lose its identity and it concerns her. This is new and she said she did not know how that was going to play out. Dr. Speir stated that, his opinion is that the Coalition may take on issues the Sentencing Commission did not want to get involved in or cannot.

Ms. Brooks said that part of the frustration is that we started out with leadership from the Legislature on the Commission and we have not had their presence. She said that one thing we have done in Alabama is that we just create more and more groups to deal with the same problems, because we didn't deal with them before. She indicated that she was worried that this might be a new group that would subsume the Sentencing Commission.

Dr. Speir stated that one item the Coalition might take on which the Sentencing Commission would not want to pursue, is changing drug amounts and the affects it would have. It is open to a lot of issues and, like Cynthia Dillard stated, they may be looking at things which are outside the Sentencing Commission's statutory authority. It was noted that Judge Colquitt, the Commission chair, was a member of the Coalition and that this Coalition was a short-term project.

Kent Hunt asked if any legislators present at their last meeting? Ms. Davis said yes, and that there were legislators that have committed to be present and to participate: Dell Marsh, Cam Ward, Priscilla Dunn, Rod Scott.

Judge Colquitt said to understand, you really need a little history. The Sentencing Commission was approached before this Coalition was established and asked what was the position of the Sentencing Commission on certain issues. A lot of these issues we have dealt with before, and that was reported. There are some differences as to what issues we deem as priority issues for the Sentencing Commission versus what issues the Coalition sees as top issues for them. The Coalition has certain issues they want to look at that we do not necessarily count as our number one items. We have not been into as much such things as the sentence ranges for particular types of crimes, where we have actually started identifying specific family of crimes and going in and changing the criminal code. We did that with theft because that is something that showed up as really needed. That was not a policy issue, we did not deal with policy issue, we dealt with history. All we were doing was saying that the policy of the Legislature when it passed the Criminal Code in 1977 was that crime would be punished at a certain range based on the value of property taken. When we changed the theft laws, all we did was go back and put that policy back in place, because it had changed due to inflation. What was happening was that what the Legislature had decided was a misdemeanor or a Class C felony, now was a Class C or B felony. It was pushing up because of inflation and we put it back to where it was. In doing so, we did not change any legislative policy. The Coalition is looking at legislative policy and the things they are dealing with are things we decided a long time ago that if we were going to deal with all of the myriad of things the Legislature had given us to deal with – structured sentencing, truth in sentencing, etc., we could not meet those mandates and take on a lot of policy changes. The Coalition is looking at a much broader range of things. Before the Coalition was established, it was discussed with us about whether or not the Sentencing Commission was moving toward taking on all these other roles. Judge Colquitt stated that although every thing we do affects prison population, our number one objective is not reduction of the prison population. That is not our number one goal. Our number one goal is protection of the public and public safety; therefore, we look a lot at violent crimes vs. nonviolent crimes. Naturally with limited resources, you are going to get into issues about who should be in prison. We believe that violent criminals should be in prison longer. We do get into prison population, but that is not our objective as a number one goal. Other groups can have that as an objective but they are on a different path, they are dealing with a different issue. Similarly, to date the Sentencing Commission has not looked at Capital Murder or death penalty cases. This in itself would be all consuming since it such a complicated and broad topic.

Philosophically, policy-wise, goal orientation, and everything for the Coalition is different from the Sentencing Commission. In talking with the people before it was created, we too were sensitive to several troubling things. One, it is true that the State of Alabama creates a Task Force about every other day on something. Now we have Coalitions. We have seen that since we have been in existence. Governor Siegleman appointed several organizations. Governor Riley had several groups that have had efforts toward doing something to alleviate prison crowding. One of the reasons that we keep doing that is because that is not the number one agenda of the Sentencing Commission. This goes back to the Sentencing Institute and the problems we had trying to convince the Legislature that we were not the Sentencing Institute. There were also sentencing Task

Forces; right after the Sentencing Commission was established, Governor Seigleman appointed one. Judge Colquitt further noted that, by law, we have two legislators that belong to this Commission. While they have not attended the Commission meetings, they have been actively involved in sponsoring our bills and getting our legislation passed. These are, by statute, appointed to the Commission by virtue of their office. The Coalition is different. They recruited the legislators and other members who promised to serve as active participants.

Ms. Brooks asked which members of the Commission are on the Coalition. It was noted that Chairman Colquitt, Bill Wynn, and Miriam Shehane were members, but there are others, like Commission staff who are attending these meetings. It was noting that these were open meetings.

Ms. Flynt stated that they would keep the Commission members of everything that is going on and what is being considered and that she thought that the Coalition would probably benefit us and what we are trying to accomplish in the long run. She mentioned that this was a lot like the Chief's Drug Court Task Force; we asked to take on that project but we did support it. As far as whether we would ask for the Coalition to support our bills. In the past we have gone to the UJS Legislative Committee and asked for their support, which they have always. Ms. Flynt indicated that she thought that should be the route the Commission should continue to go. She did not know whether the Coalition would seek support from the UJS Legislative Committee. Judge Colquitt mentioned that the Coalition is looking to us for technical support any way. Our staff now has the track record to deal with these issues.

Miriam Shehane noted that for the two Coalition meetings that have been held, the legislators had attended. Ms. Flynt said that maybe after the Task Force has completed its report and legislative agenda and is no longer in existence, the same legislators will get interested and involved with the Sentencing Commission. Judge Colquitt again noted that for our Commission we do not recruit members, they tell us who they are going to send as members of the Commission. We have recruited some for membership on the Advisory Council.

Committee Updates .

Uniform Sentencing Order Committee

Ms. Flynt announced that the Uniform Sentencing Order Committee has established a meeting via conference call for June 2, 2010. While a Uniform Sentencing Order was already finalized in March (after three years of work), however, after we asked for input from judges, three different issues came up that the Committee needs to meet and consider:

1. Language should be added which would allow the judge to sentence a person to the penitentiary until they complete the SAP or Crime Bill program, etc. and bring them back before the judge. Foster Cook from TASC recommended this change.
2. A provision should be included to specifically address reverse split sentences.

3. Based on the Good Time statute which states that the court “shall certify on the transcript if a defendant is entitled to good time,” Scott Rouse from ADOC suggested that a provision be include on the Uniform Sentencing Order.

Ms. Flynt advised that in addition to considering amendment of the Uniform Sentencing Order finalized in March, Rosa Davis and Judge Rains are going to be drafting a Uniform Sentencing Order for multi-count indictments.

Legislative Committee

Ms. Flynt advised that she has already talked to Dr. Lou Harris, Chair of the Legislative Committee, about setting another meeting. It was decided that it would be better to wait until after the Sentencing Standards Committee meeting on June 4, 2010.

Sentencing Committee

Mrs. Davis stated that in their meeting on June 4th, the Sentencing Committee will look at the schedule for pulling together data and determine a schedule for the committee to follow.

New Business.

Louisiana Sentencing Commission

Ms. Flynt advised that Louisiana has a new Sentencing Commission and the Commission staff and Judge Colquitt were visited by Judge Wicker, a representative from Louisiana’s Pardon and Paroles Board, a person from the Department of Corrections and a data person from their Commission. Judge Colquitt was asked to visit Louisiana to address the new Commission. She asked Judge Colquitt to give the Commission members a report on his visit.

Judge Colquitt stated that when Judge Wicker, a Louisiana Appeals Court judge, checked with the State of Alabama, one of the things she said was that Louisiana was trying to look to a state as a model. They decided that Alabama was the best model. The reason was that we were another southern state and we had been quite successful compared to them in our efforts. Judge Colquitt said that Judge Wicker is the one heading up this project in Louisiana. Louisiana had a Sentencing Commission and had voluntary guidelines before Alabama did. When they tried to implement the guidelines, the Sentencing Commission was disbanded. While the Sentencing Commission was still established by law, it was no longer in existence. The Commission was disbanded over the guidelines and the District Attorneys’ Association of Louisiana went after everyone involved and killed the Commission and the guidelines. They have now have all types of problems. They outrank Alabama in terms of the percentage of people in prison, like 10,000- 12,000 or more and Louisiana’s general population is a little less than Alabama’s. One of the driving forces in Louisiana now is prison overcrowding. This contingent contacted Chief Justice Cobb and made contact with people around the state. They came to Tuscaloosa and then came to Montgomery and talked to our Commission staff. Judge Colquitt said that they so impressed by what we were doing that they invited

him down to talk to a Coalition sponsored by the Louisiana State Bar that was being held in Baton Rouge a couple of weeks ago. There were about 75 people there and they had legislators, judges, lawyers, all types of criminal justice officials present. Their effort is to reorganize the Sentencing Commission, which still exists by law, but not in fact. They had membership but no meetings. They were doing nothing. The Commission was suppose to meet this month. The Chair is a young rural judge from Louisiana who had not been involved before.

Judge Colquitt said that before going to Louisiana, Judge Wicker called him several times wanting to make sure that he told it like it was. He said he did – he told them if they think that they are going to get into this and you are going to be successful, you are going to have to deal with it in certain ways. First, you have to be realistic about what will be viable. What can you take to the Legislature, get them to pass it, and then get people to actually work with it. They got power actors and pressed through sentencing guidelines and then they couldn't get them implemented. Then they went back to the Legislature and got these repealed. Judge Colquitt explained to them that they had to build a broad coalition of folks who are willing to sit down and talk through things, take things one step at a time, and be realistic in what can be achieved and be successful. He said that he told them that, this is not McDonald's and not its not Burger King – you're not going to get it fast and you're not going to get it your way. You must do it slowly and methodically. Judge Colquitt said that he told them that Alabama's Sentencing Commission has been goal-oriented, methodical, has not tried to push through a radical agenda or get too far out in front of things, a has dealt with things we could realistically deal with. Because of that, the Commission has been successful in a lot of ways. He said that the way to really realize how successful we have been is to go to Louisiana and hear them report on what they did. Louisiana has its issues and it is going to be years before they get back on track. They tried to take too much on and too quickly and forcefully and what they got was a rising opposition and repeal and they had to start all over again. It is a good message for us – that they are looking to Alabama as a state that has been successful. Ms. Flynt noted that when you look at whether our standards have been successful or not, you have to remember that John's status quo projections showed a much higher prison population than we have now, so something must be working, which we think are the standards and other changes we have made, such as amendment of the theft statutes.

2010 Crime Bills

She reminded the Commission members that she had e-mailed them all summaries of 2010 bills that had passed, which were mostly crime bills. One of these was the Technical Violator bill, which was not a Commission bill. It provides that probation technical violators (anyone committing violations of probation other than commission of a new offense) who meet certain criteria cannot be incarcerated more than 90 days. As originally introduced it had an appropriation provision in it. There is a retroactive provision. This Act went into effect April 30, 2010. Ms. Flynt stated that AOC has developed a form petition (as required by the Act's provision), a sample order, sample motion of production, and a memo will go out today to the judges and clerks. There are several criteria they have to meet to come under the restricted incarceration provisions, one of which that they must have successfully completed probation for six consecutive

months, which means being current on payment of all court monies. They cannot be violent and this determination is to be made by the judge. They cannot have any pending charges or crimes, cannot have any disciplinaries while incarcerated, and it can only be violations for a technical violation. Ms. Flynt stated that she would send a copy of the memo to the Commission members since it would be affecting our courts. She noted that she did get included in the bill that any petitions filed for retroactive application would have to have a unique identifier – a .10 designator, so we can track them. We wanted to avoid the problem we had with Kirby petitions. Since they never gave them a unique designation we could not tell how many were filed, how many were granted or how many were denied.

NASC Conference

Ms. Flynt mentioned the upcoming NASC Conference, which was being hosted by the Alabama Sentencing Commission, stating that they hoped to have the agenda finalized the first week of June. She announced that with the help of Rosa Davis, \$1500 was donated by Cumberland and \$1000 by Mark White's law firm. The State Bar will be putting an advertisement in their next newsletter, because they could not give money. The Alabama Defense Lawyers are sending Commission member Joel Sogol. We are trying to get Judge Alm, with the HOPE project as a presenter. The lady that helped with research on the HOPE project, Dr. Angela Hawkins, is coming. Judge Wicker from Louisiana and some of the Sentencing Commission members are coming. We have two people from the new sentencing commission in Illinois are coming, and will be sent by Vera Institute. She ask the members to give her any suggestions on people or organizations that we could approach for contributions. Since the Commission has had a budget cut, Ms. Flynt advised that we would not be able to fund travel for any Commission members this year but hoped that they could get their association or agency to send them. Ms. Flynt announced that while we were successful in not having all of our budget cut 12%, since we were able to eliminate the director's salary and fringe benefits, we still were hit hard.

Advisory Council

Ms. Flynt announced that David Horn, who was placed on the Advisory Council as the President of the Alabama Association of Community Corrections, is no longer occupying that position, but is still the Director of Shelby County Community Corrections and has indicated that he would like to continue to serve as a member. He did, however, recommend that the Commission consider appointing new President, Steve Green, who is Director of Mobile's Community Corrections program. Rosa Davis nominated Steve Green to be a member of the Alabama Sentencing Commission's Advisory Council. Judge Colquitt seconded the motion, which was unanimously approved. All members voted to appoint Steve Green.

National Law Enforcement Officer Memorial Services

Chaplin Adolph South announced that the National Law Enforcement Officer Memorial Services will be held in Washington D.C. on May the 15th. In 2009 there were 126 officers killed in the line of duty nationwide. Forty-seven were killed by gun fire. So far

this year there have been 66 officers killed, as of yesterday, nationwide. Five of those officers that we honored in Washington were from Alabama. There was one killed already, a Guntersville Officer, was killed on New Years Day. On the 13th we hold a candlelight vigil at the National Law Enforcement Officers Memorial Wall. There are almost 20,000 names on that wall. There were 324 new names engraved on the wall this year. At the Candlelight vigil there were over 20,000 people in attendance and we had over 25,000 at the memorial service.

The next meeting was tentatively scheduled for September 17, 2010.

There being no further business, the meeting was adjourned.